

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:
Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 3847 of 2021

In the matter of:

An Appeal under section 410 of the Code of
Criminal Procedure

-And-

In the matter of:

Syed Iqbal Morshed and another
... Convicts-Appellants

-Versus-

The State and another
... Complainants-Respondents.

Mr. Jugal Kishore Biswas, Advocate
... For the Convicts-Appellants

Ms. Lilia Aktar, Advocate
... For the Complainant-Respondent no. 2

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Ms. Farhana Abedin, A.A.G
... For the State

Heard on: 13.01.2026, 14.01.2026 and
18.01.2026
Judgment on: 26.01.2026

This appeal preferred under section 410 of the Code of Criminal Procedure, 1898 is directed against the judgment and order of conviction and sentence dated 21.09.2020 passed by the learned Additional Metropolitan Sessions Judge, First Court, Chattogram in Sessions Case No. 2817 of 2014 arising out of C.R. Case No. 193 of 2014 (Double Mooring Zone) convicting the accused under Sections 138 and 140 of the Negotiable Instruments Act, 1881 and sentencing them to suffer simple imprisonment for a period of 6(six) months and to pay a fine of Tk. 5,00,000/- (five lac).

The prosecution case, in short, is that the accused Syed Iqbal Morshed and Mohammad Rezaul Alam jointly signed and issued cheque No. CBL, 9071086 dated 08.12.2013, drawn on BRAC Bank Limited, in favour of the complainant, Confidence Cement Limited for payment of Tk. 5,00,000/- (five lac) on 09.12.2013 against payment of bill of cement. The complainant presented the cheque on 09.12.2013 for encashment, which was dishonoured with the endorsement of 'insufficiency of funds'. On 17.12.2013, the complainant issued a legal notice through registered post with AD

demanding payment of the cheque amount. Although the accused received the said notice on 26.12.2013 but they failed to make payment within the stipulated time. Consequently, on 09.02.2014, the complainant filed C.R. Case No. 193 of 2014 (Double Mooring Zone) before the learned Chief Metropolitan Magistrate, Cognizance Court No. 3, Chattogram. Eventually, the case was transmitted to the learned Additional Metropolitan Sessions Judge, 1st Court, Chattogram. On taking cognizance, charge was framed against the accused under Sections 138 and 140 of the Negotiable Instruments Act, 1881 on 16.02.2016, wherein the accused pleaded not guilty and claimed to be tried. In support of the charge, the prosecution examined 01(one) witness while the defence examined none. The accused could not be examined under section 342 of the Code of Criminal Procedure as they were absent. Upon conclusion of the trial, the learned Additional Metropolitan Sessions Judge, First Court, Chattogram by judgment and order dated 21.09.2020 convicted the accused under Sections 138 and 140 of the Negotiable Instruments Act, 1881, and sentenced them there

under to suffer imprisonment for 6(six) months and fine of Tk. 5,00,000/- (five lac) against which the accused preferred the instant appeal.

Mr. Jugal Kishor Biswas, learned Advocate appearing on behalf of the appellant submits that although the accused issued the cheque, but due to hardship, he could not make payment the cheque amount after receipt of the notice sent by the complainant after dishonour of the cheque and in the meantime, the appellant paid 50% of the cheque amount to the complainant. He prays for setting aside the impugned judgment and order passed by the trial Court and for allowing the appeal.

Per contra, Ms. Lilia Aktar, Advocate appearing on behalf of the complainant-respondent No. 2, submits that the accused issued the cheque on 08.12.2013 for Taka 5,00,000/- and the same was dishonoured on 09.12.2013 due to 'insufficiency of funds'. The complainant sent a legal notice through registered post with AD and despite service of notice upon the accused, they failed to make payment of the cheque amount. During the trial, the prosecution successfully proved

the charge beyond reasonable doubt, and the trial Court legally passed the impugned judgment and order convicting and sentencing the accused. Hence, she prays for dismissal of the appeal.

I have considered the submission of the learned Advocates for both sides, perused the petition of appeal, impugned judgment and order passed by the trial Court and the materials on records.

Upon careful scrutiny of the evidence it appears that Syed Iqbal Morshed was the Managing Director and Mohammad Rezaul Alam was the director of M/S Blooming Builders Ltd. The cheque in question was issued in the name of the company and signed by both of them and the appellants were in charge and responsible for the conduct of the business of the company.

P.W-1, Md. Royhan Kamor, Senior Executive of Confidence Cement Ltd. produced oral and documentary evidence like authorization letter (exhibit-1), complaint of petition (exhibit-2), cheque (exhibit no. 3), dishonour slip (exhibit no. 4), postal receipt (exhibit no. 5 series) and

successfully proved the case. On perusal of the record it appears that the complainant has duly complied with the procedure laid down in Section 138 of the Act, 1881 in filing the case. The case was filed within statutory period prescribed under clause (c) of the proviso to Section 138. The complainant has also proved the consideration for which the cheque was issued and that it is the holder of the cheque in due course. The Courts below rightly found the appellants guilty of the charge. I find the impugned judgment and order of conviction do not suffer from any illegality or infirmity.

However, with regards to the sentence, reliance may be placed upon the decision passed in *Aman Ullah Vs. State*, reported in 73 DLR(2021) 541, it has been held:

“There can be no dispute in so far as the sentence of imprisonment is concerned that it should commensurate with the gravity of the crime. Court has to deal with the offenders by imposing proper sentence by taking into consideration the facts and circumstances of each case. It is not only

the rights of the offenders which are required to be looked into at the time of the imposition of sentence, but also of the victims of the crime and society at large, also by considering the object sought to be achieved by the particular legislation.

Considering the facts and circumstances of the case and the object of the law, I am of the view that the sentence of imprisonment would be a harsh sentence having no penal objective to be achieved. Hence, the sentence of imprisonment is set aside.”

I find no reason to take a different view from the *ratio* laid down in the decision passed by this Court.

Considering the gravity of the offence and the facts and circumstances of the case and *ratio* laid down in the above-mentioned reported case, I am of the view that the ends of justice would be best served if the sentence of imprisonment passed by the trial Court is modified.

It appears that the appellant has already deposited 50% of the cheque amount in the trial Court prior to filing the appeal.

The complainant Confidence Cement Limited is entitled to receive the said 50% of the cheque amount forthwith.

In view of the foregoing discussions and the *ratio* laid down in the above-mentioned reported case, the order of the Court is as follows:

The conviction of the appellants under Sections 138 and 140 of the Act, 1881 is affirmed and the sentence of 06 months simple imprisonment is set aside. The Court concerned is directed to disburse the said 50% cheque amount which was deposited prior to filing the appeal to the complainant-respondent No. 2 forthwith. The convict-appellants are directed to pay the remaining portion of the value of the dishonoured cheque that is Taka 2,50,000/- to the complainant-respondent No. 2 through trial Court within 4(four) months from the date of receipt of this order, in default they shall suffer simple imprisonment for 03(three) months. If the convict-appellants do not pay the remaining portion of the fine as ordered or opts to serve out the period of imprisonment in lieu of payment of fine, they are not exempted from paying the same. In that event, the Court

concerned shall realize the fine under the provisions of Section 386 of the Code of Criminal Procedure.

In the result, the appeal is dismissed with modification of the sentence.

The convict-appellants are released from the bail bond.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Ariful Islam Khan
Bench Officer